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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,120	01/30/2002	Rauno Rantanen	3397-111PUS	1903

7590 11/28/2006

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EXAMINER

TUROC, DAVID P

ART UNIT PAPER NUMBER

1762

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

8

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/019,120

Applicant(s)

RANTANEN, RAUNO

Examiner

David Turocy

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 27, 28, 35, 41, 47, 53, 67 and 86-89.
Claim(s) rejected: 20-26, 29-34, 36-40, 42-46, 48-52, 54-66 and 76-85.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Detailed Action.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11/2/06 have been fully considered but they are not persuasive.

The applicants argued against the Ruggiero reference, stating the reference forms drops and drops can not be considered jets. The examiner disagrees. Since the applicant has not explicitly stated a definition for the term "jet" the examiner is giving the term the broadest reasonable interpretation. Ruggiero is teaching of an ink "jet" method, where in each droplet of ink is ejected from the nozzle plate (Column 1, lines 15-20). Ruggiero is teaching individual drop being ejected from the nozzle plate and therefore each droplet is continuously jetted from the nozzle plate, in the form of a "jet", for a small amount of time.

The applicant argues against the Ruggiero reference, stating that the reference fails to teach forming openings in which continuous jets are formed. The examiner disagrees and notes the claim is an apparatus claim and such a limitation is merely intended use of a design. The openings as taught by Ruggiero are small and therefore are capable of forming continuous jets. The prior art only has to provide a structure that is capable of performing in the manner claimed and not necessarily have ever been intended to be used in this manner. It is well settled that the intended use of a claimed apparatus is not germane to the issue of the patentability of the claimed structure. If the prior art structure is capable of performing the claimed use then it meets the claim. *In re Casey*, 152 USPQ 235, 238 (CCPA 1967); *In re Otto*, 136 USPQ 459 (CCPA 1963). If

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the applicant were to establish that significant structural differences exist with the prior art apparatus which would make it incapable of forming jets and amend the claims appropriately, the art rejection over the apparatus claims will be withdrawn.

The applicant argues against the Briggs reference stating the reference discloses the front plate of the showerhead is fixed and therefore there is no actuator for moving the front plate relative to the rest of the showerhead. While the examiner does not disagree, the claim as written requires a feeding chamber for receiving treating fluid (in the case of Brigg, the pipe leading to the showerhead) a means for directing treating agent from the feeding chamber (shower head) and an actuator coupled to the nozzle plate (i.e. the swivel ball coupled to the front plate via the showerhead). Therefore the nozzle plate moves relative to the pipe leading to the showerhead.

The applicants argue against the Franz reference stating an atomized fluid is not a continuous jet as required by the claim. It is unclear what the applicants define as "continuous jet" and the examiner can not ascertain an explicit definition from the applicants disclosure. Therefore, giving such a term its broadest reasonable interpretation, the examiner maintains that atomized fluid can read on "continuous jets". The applicants argue that the pipe 278 partially forms the jet and therefore the openings do not form the jet. However, the claim does not require the jets to be formed by the openings, only that the "openings in which the jets are formed". The jets are clearly formed in the openings as taught by Franz and therefore read on the claim as written. In response to applicant's arguments against the Ruggiero and Haaland references individually, one cannot show nonobviousness by attacking references individually

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where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Ruggiero teaches of a moving nozzle plate and discloses, a similar nozzle plate, forming the droplets using the nozzle plate on a substrate discloses that it is known in the art to provide a fluid reservoir (14) or a fluid pipe (15) to store the fluid ejected from a nozzle at an external location and provides passage to the nozzle for spraying (figures). The selection of something based on its known suitability for its intended use has been held to support a *prima facie* case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945).

Alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Ruggiero to include a fluid reservoir to store the fluid distant from the nozzle with a reasonable expectation of success because Haaland discloses when spraying liquid through a nozzle plate it is advantageous to have the liquid in a tank. The prior art can be modified or combined to reject claims as *prima facie* obvious as long as there is a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375.

Conclusion

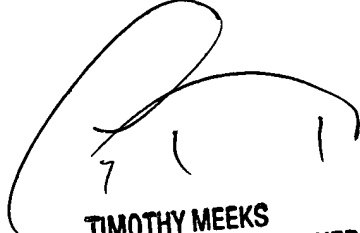
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Turocy whose telephone number is (571) 272-2940. The examiner can normally be reached on Monday-Friday 8:30-6:00, No 2nd Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David Turocy
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TIMOTHY MEEKS
SUPERVISORY PATENT EXAMINER